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MONTANA LEGISLATIVE HISTORY

Chapter 495 Session L 1989
Bill House 542 Senate _____

History and final status sheet x
Introduced bill x
Fiscal note N/A
Third reading bill x
Final version of bill x

House Committee on Natural resources

Hearing date(s)* 2/8, 2/13

Executive action (vote) date(s)* 2/13

Comm. Report 2/14

Floor 2nd reading & vote 2/18; 3/31

Floor 3rd reading & vote 2/21; 4/1

Senate Committee on Agriculture

Hearing date(s)* 3/13, 3/17

Executive action (vote) date(s)* 3/20

Comm. Report 3/20

Floor 2nd reading & vote 3/22

Floor 3rd reading & vote 3/27

Conference or Free Conference Comm. _____ Yes x No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes x No

Committee _____ Report _____

NOTES:

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Compiled by: SJL

Date: June 23, 2014

HOUSE FINAL STATUS

2/21	3RD READING PASSED	88	9
	TRANSMITTED TO SENATE		
2/28	REFERRED TO NATURAL RESOURCES		
3/08	HEARING		
3/09	COMMITTEE REPORT--BILL CONCURRED		
3/10	2ND READING CONCURRED	47	0
3/13	3RD READING CONCURRED	46	3
	RETURNED TO HOUSE		
3/17	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/18	TRANSMITTED TO GOVERNOR		
3/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 230 EFFECTIVE DATE: 10/01/89		

HB 541 INTRODUCED BY GOULD
REVISE LAWS RELATING TO VOCATIONAL REHABILITATION PROGRAMS
BY REQUEST OF DEPARTMENT OF SOCIAL & REHABILITATION SERVICES

2/02	INTRODUCED		
2/02	REFERRED TO HUMAN SERVICES & AGING		
2/13	HEARING		
2/16	FISCAL NOTE REQUESTED		
2/16	COMMITTEE REPORT--BILL PASSED		
2/18	2ND READING PASSED	94	0
2/18	FISCAL NOTE RECEIVED		
2/21	3RD READING PASSED	96	0
	TRANSMITTED TO SENATE		
2/22	FISCAL NOTE PRINTED		
2/28	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	45	0
3/14	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	86	1
3/17	3RD READING AMENDMENTS CONCURRED	94	0
3/23	SIGNED BY SPEAKER		
3/27	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 396		
	EFFECTIVE DATE: 3/30/89 (S2, 13, 17, 19)		
	EFFECTIVE DATE: 7/01/89 (S1, 3-12, 14-16, 18)		

HB 542 INTRODUCED BY GUTHRIE, ET AL.
CHANGE BURDEN OF PROOF FOR CERTAIN WATER PERMIT CRITERIA

2/02	INTRODUCED		
2/02	REFERRED TO NATURAL RESOURCES		
2/08	HEARING		
2/14	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	95	0
2/21	3RD READING PASSED	95	1

	TRANSMITTED TO SENATE		
2/28	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
3/13	HEARING		
3/20	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED AS AMENDED	28	8
3/27	3RD READING CONCURRED	34	15
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	92	0
4/01	3RD READING AMENDMENTS CONCURRED	92	1
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/11	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 495 EFFECTIVE DATE: 4/11/89		

HB 543 INTRODUCED BY CONNELLY, ET AL.
ALLOW PARTIAL PAYMENT FOR RETIRED HIGHWAY PATROL OFFICERS' HEALTH INSURANCE PREMIUMS

2/02	INTRODUCED		
2/02	REFERRED TO STATE ADMINISTRATION		
2/03	FISCAL NOTE REQUESTED		
2/08	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
2/14	HEARING		
2/15	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/17	FISCAL NOTE REQUESTED ON 2ND READING COPY		
2/18	2ND READING PASSED	58	38
2/20	TAKEN FROM ENGROSSING		
2/20	REREFERRED TO APPROPRIATIONS		
2/27	REVISED FISCAL NOTE RECEIVED		
3/02	REVISED FISCAL NOTE PRINTED		
3/07	HEARING		
3/20	HEARING		
3/22	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	67	27
3/23	3RD READING PASSED	71	21
	TRANSMITTED TO SENATE		
3/27	REFERRED TO STATE ADMINISTRATION		
3/31	HEARING		
4/06	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED	45	1
4/10	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/11	2ND READING AMENDMENTS CONCURRED	86	11
4/12	3RD READING AMENDMENTS CONCURRED	85	12
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 627 EFFECTIVE DATE: 7/01/89		

HB 544 INTRODUCED BY RICE
EXPAND SCOPE OF STATE'S APPELLATE RIGHTS IN CRIMINAL CASES

House BILL NO. 542

INTRODUCED BY [signature] ARLESTAD

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED; REQUIRING THE APPLICANT TO SUBMIT INDEPENDENT EVIDENCE TO MEET THE CLEAR AND CONVINCING EVIDENCE STANDARD; AMENDING SECTION 85-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) Except as provided in subsections (2) ~~through (4)~~ and (3), the department shall issue a permit if the applicant proves by substantial credible evidence, or by clear and convincing evidence if a valid objection to the application is filed according to this part, that the following criteria are met:

(a) there are unappropriated waters in the source of supply:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(2) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

INTRODUCED BILL
HB 542

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(3) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (3) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (2) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (3)(b)(ii) and (3)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in

the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(4) To meet the clear and convincing evidence standard in this section, the applicant shall submit independent hydrologic or other evidence demonstrating that the criteria are met.

(5) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. ~~No~~ An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner ~~such~~ an unauthorized appropriation, diversion, impoundment, use, or other restraint. ~~No~~ A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

NEW SECTION. **Section 2.** **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of

[this act].

NEW SECTION. **Section 3.** **Effective date.** [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on February 8, 1989, at 3:20 p.m.

ROLL CALL

Members Present: All except:

Members Excused: Rep. Clark

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: None

HEARING ON HB 542

Presentation and Opening Statement by Sponsor:

REP. BERT GUTHRIE, House District 11, testified as set forth in EXHIBIT 1.

Testifying Proponents and Who They Represent:

Jack Salmond, Western Environmental Trade Association (WETA)
Andy Neal, Farm Bureau Federation
Carol Mosher, Montana Stockgrowers Association, Montana Cattlewomen, Montana Association of State Grazing Districts
Leonard Blixrud, Teton River Water Users Association,
Ray Anderson, self, Choteau

Proponent Testimony:

JACK SALMOND testified as set forth in forth in EXHIBIT 2.

ANDREW NEAL testified as set forth in EXHIBIT 3.

CAROL MOSHER testified as set forth in EXHIBIT 4.

LEONARD BLIXRUD testified as set forth in EXHIBIT 5.

RAY ANDERSON testified that as a licensed water well driller since 1960, he had seen DNRC issue permits in a wanton manner. He said that in many instances, permits were issued when the department had no idea how much ground water

was there. He said the burden of proof that a prior right would not be jeopardized should be on the person applying for the permit.

Testifying Opponents and Who They Represent:

John Thorson, Doney and Thorson Law Firm, Helena
John Fitzpatrick, Director of Community and Regulatory Affairs, Pegasus Gold Corporation

Opponent Testimony:

JOHN THORSON said he had served as legal consultant to the Legislature's Select Committee on Water Marketing, which redrafted the permit criteria procedure, the subject of this bill. He said that under the more traditional water laws, anyone could go down to the creek and appropriate water. He said it would only be when there were adverse effects that the courts became involved. He said that all of the western states had some sort of permit procedure, either through the state engineer or the Department of Natural Resources and Conservation (DNRC), the purpose of which was to provide protection for existing water users. Out of this procedure arose the requirement to notify other water users when application was made for a new permit.

In 1984-85, he said the legislature was concerned with the possibility of water being exported out of state for energy uses. Thus the Select Committee on Water Marketing and the Legislature modified the law and put in different standards of proof that would afford protection to Montanans and raise the standard of proof for people from out of state who wanted to take water. He noted that the state was unable to prevent absolutely water from being exported out of the state because of U.S. Supreme Court decisions. For large appropriations of water, there was a clear and convincing standard of proof, but for the small appropriations, like those being affected by this bill, the standard was substantial credible evidence.

He said that "clear and convincing evidence" was a very high standard, just below the criminal court standard of "beyond a reasonable doubt", and was usually used in cases of fraud, undue influence, suits on an oral contract to make a will, or suits to modify the terms of a lost will. The policy behind that standard was that this standard should be applied to the case where there had been deception. He said he did not think this was the type of concern that we had when people in Montana were attempting to appropriate water for the first time. He said his experience in this field showed him that it would be almost impossible to get a permit if you had an objection filed, because the standard of proof would be too high.

MR. THORSON said he understood that there might be problems in the Choteau area concerning the issuance of permits beyond the ability of the surface or groundwater regime. However, there were provisions currently in the law to correct that problem. An individual could go to DNRC for authority to close a basin. He said HB 542 would impose a sledge hammer on a job that a hammer could accomplish by imposing a very restrictive standard for permitting anywhere in Montana. He said he thought public policy in the state was favored when water was put to use, for agriculture, irrigation, municipalities, instream flows, etc. He said that by elevating the standard, water would be made unavailable for Montanan's who did not have a water right. He also feared that this standard would make its way over to the change criteria. For all those reasons, he urged the committee's defeat of the legislation.

JOHN FITZPATRICK said the bill had three major defects. First, it was a shot gun approach to a very localized problem; second, the existing water rights process was already sufficiently stringent to protect existing holders of water rights in that the water rights process was the most difficult, burdensome and potentially time consuming and expensive process that anyone could encounter; and third, there was a major question as to what constituted a valid objection.

MR. FITZPATRICK said the law as proposed would require a clear and convincing standard in the presence of a valid objection. He asked what was a valid objection, and said that at the present time, DNRC would accept on face value virtually any objection which was filed against the water right. Some of these objections could be viewed as valid from the beginning and others not.

He also suggested that the water reservation process in the state was also subject to the objection process. People and agencies who were interested in preserving in-stream flow water should take a serious look at this, because once objections were filed to instream flows, the clear and convincing standard would also apply.

Questions From Committee Members:

REP. ADDY asked Mr. Thorson and the sponsor how often were objections filed. MR. THORSON said in his experience it happened quite frequently because it doesn't cost any money. REP. GUTHRIE commented that in his area, with the ever increasing applications and the permissiveness of DNRC in the issuance of the permits, there was apathy on the part of the people being affected. He said the success ratio from 1973 to 1983 on new water applications was in excess of 90%, while since 1983, the success ratio had dropped. Now the department might attempting to accommodate instream flow, rather than keeping Montana water in Montana. He suggested

that the department was now in a dilemma as to which approach to use.

REP. ADDY directed the same question to the department. GARY FRITZ, Department of Natural Resources and Conservation (DNRC) said that since the permitting statutes were enacted in 1973, the department had received 14,000 permit applications, 18% of which, on the average, received objections. Of those, about 15% go to hearing. MR. FRITZ said that as Rep. Guthrie had indicated, 90% of those that went to hearing were granted water rights. Since 1983, the percentage was 70% granted, 30% denied.

REP. ADDY asked Mr. Thorson and Mr. MacIntyre to comment on the conflict between the clear and convincing standard, and the substantial credible standard. He asked if "a preponderance of the evidence" would be an acceptable compromise. MR. THORSON said a preponderance of the evidence was a little below the substantial credible standard. REP. ADDY asked if that would be an appropriate standard to place in a bill that dealt with this subject matter. MR. THORSON said the preponderance standard would bring the state back to the pre-1983 legislation. He said the desire of the substantial credible standard was to elevate it a little for instate appropriations, and to elevate it a lot for water imported out of state. He added that he felt Rep. Guthrie's standard went too far.

MR. MACINTYRE said he agreed with Mr. Thorson, and that prior to 1983 there was not a standard set within the statute. He said the objective in HB 542 was to make it more difficult for those without a water permit to receive one. In addition, he added that every permit that had been granted had been conditioned.

REP. ROTH asked Mr. Thorson if it was the responsibility of the original water right holder to pay an attorney for his services in defending them in an objection. MR. THORSON said the burden of proof was still on the applicant to either prevail by substantial credible evidence or by clear and convincing evidence in higher appropriations, but that parties bore their own expenses. He said there were provisions in district court that would allow the prevailing party to get attorney's fees to be included in the judgement, but no such provision was available at the administrative level.

REP. ROTH asked Mr. Thorson why the substantial credible language was not stricken, and why it existed in the bill together with the clear and convincing. He asked if that still left the substantial credible standard as a factor. MR. THORSON said that to him it meant that if there were no objection filed, the department still would have to look at the record, and find that there was substantial credible evidence for granting the permit. If there were an

objection filed, it would become a contested hearing, and the standard would be elevated to a clear and convincing standard, which would require more of a showing by the applicant. He said that he was uncertain as to why there was that distinction, why the standard was elevated in the case of an objection. He suggested that Rep. Guthrie explain his intent.

REP. ROTH asked the same question of Rep. Guthrie. REP. GUTHRIE said he had wanted the unappropriated waters to be available to the people of Montana. Therefore, if there were no objections during and application, DNRC would not have to use as high a standard in issuing that permit as they would if there were objections.

REP. RANEY asked Mr. MacIntyre if this would be changing the horse in mid-stream as far as the pending instream flow requests in the Missouri and Clark Fork basins. MR. MACINTYRE said those processes were separate from the permitting process. He said the Board of Natural Resources made those decisions based upon criteria that were different, and that HB 542 would not affect the reservation process. He said the bill would have an effect on the permitting process in those basins for the agriculturalists and industrialists who wanted to come in and develop new water. It would change that standard.

REP. HANNAH asked Mr. Zackheim if the language "substantial credible evidence, or if a valid objection to the application is filed, then clear and convincing standard" would make the issue less confusing. MR. ZACKHEIM said he read the bill as Mr. Thorson explained it, but said different language to say the same thing could be considered in executive action.

REP. O'KEEFE asked Mr. MacIntyre if he would explain the shifting burden of proof under the permit process. MR. MACINTYRE said that in the law, there was a shifting of production of evidence by the parties. He said the burden of proof always lies with the party that carried the affirmative, in this case the applicant. Specifically, he said the department saw it most often in the case of adverse effect. The applicant states what he wants to do, and that he does not believe that he will harm anyone. The objector states that he feels he will be harmed and why. The objector carries the burden of production as to how that individual is being harmed. The burden then shifts back to the applicant to prove that the evidence produced by the objector is not believable, and there is not harm or that the objection could be mitigated by the conditioning power that the department has. So the burden of proof has always remained on the applicant, with the burden of production starting with the applicant, shifting to the objector and back to the applicant. He added that it had to be recognized that most applicants could not come in and prove, because they

could not hire attorneys, and did not have engineers, that every water right in that particular source will be affected. That is what the objection process is all about.

REP. O'KEEFE asked if, with the shifting burden of proof, the change in the standard to clear and convincing evidence would apply for the objector. MR. MACINTYRE said it would not change for the objector because it was not a burden of proof, but a level of production.

REP. O'KEEFE asked about the sponsor's intent with the language requiring the applicant to submit independent hydrological evidence. He said his concern was that this could invalidate any information the department might collect for evidence. REP. GUTHRIE said it was not his intent to invalidate any information that was available. It was his intent to place the burden on the applicant that he presently does not have to supply. He said the applicant should be responsible for financing his share of the information, and that it should not all be the burden of DNRC.

REP. HARPER asked Mr. Thorson to comment on the situation in which the senior water rights holder claimed that the application was going to adversely affect his existing water right. He said HB 542 was asking that the applicant disprove this by clear and convincing evidence. MR. THORSON said that was a very high standard that would require a great amount of expense in engineering studies and legal fees, and would put the hearing examiner on the spot to have an adequate record. He added that this was not the only chance the existing water user gets at this. He said these permits could be conditioned and modified on the basis of harm shown after the water was put to beneficial use. At that point, monetary damages could be sought in court.

REP. HARPER asked if a compromise could lie in this conditioning. MR. THORSON said the conditioning was a good way to determine adverse effect. The examiner could calendar the permit one year ahead and see how the water had been used during the season, and, if there was adverse effect, modify the permit accordingly.

REP. HARPER commented that it was a question of value; i.e., how valuable an existing water right was to the existing water right holder, and how much the applicant should have to pay to prove he does not affect that right. He said in some cases the hydrologic data necessary might not be available, and added that there should a better way to deal with this problem. MR. THORSON said the substantial credible standard was a sufficiently high standard for this type of proceedings. He said the existing water user, the senior water user, had the legal ability to shut off the junior who interfered with his usage. Admittedly, it would take lawyers and fees, but those remedies were there.

REP. HARPER asked if the burden should go on the applicant, or on the senior water right user. MR. THORSON said again that there were other remedies in the code for shutting down basins that have an over appropriated water supply. He said those remedies were more carefully fashioned. He reiterated that this proposed legislation was imposing a high standard statewide that could have adverse ramifications for other appropriations.

Closing by Sponsor:

REP. GUTHRIE said it was apparent that there were seeds of suspicion everywhere, with aspiring applicants thinking the prior water holders were trying to horde the water, and prior water rights holders thinking that DNRC was trying to undermine the principle of first in filing, first in use. He suggested that everyone start working together, using Montana's resources for the good of all, and not leaving the door open for the downstream states to take one of the state's most valuable resources.

HEARING ON HOUSE BILL 515

Presentation and Opening Statement by Sponsor:

REP. REHBERG opened on HB 515, quoting from a letter of opposition from Gallatin County which stated that the bill deleted a clearly stated and specific purpose and replaced it with general language. REP. REHBERG agreed with the statement, and said that was its purpose. He said HB 515 would make the statement of intent more general.

Testifying Proponents and Who They Represent:

William M. Spilker, self and the Montana Association of Realtors
Tom Hopgood, Montana Association of Realtors
H.S. Hanson, Montana Technical Council
Steve Mandeville, real estate broker, Helena

Proponent Testimony:

WILLIAM M. SPILKER, a real estate broker, land owner and property developer, testified as set forth in EXHIBIT 6.

TOM HOPGOOD said he had spoken his peace on HB 380. However, he said he had noticed that no one told the committee what public interest was, and suggested that public interest was incapable of being defined and was completely unworkable in the context of subdivision laws. He said the only way to define public interest was to look at the criteria which were left under the review section in HB 380.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2-8-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark			✓
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

EXHIBIT 1
DATE 2-8-89
HB 542

February 8, 1989

Chairman Raney and Members of the Natural Resources Committee:

For the record, I am Bert Guthrie, Representative of House District 11 which includes Teton County and part of Pondera County. Before I present my bill, let me give you a little brief history. I am the owner-operator of a piece of property that is irrigated that my grandfather homesteaded in 1895. He had the foresight to know that in this semi-arid western high country that water was critical to production and, as a consequence, he filed on water out of the Teton River drainage and I am using that same water today. I naturally support wholeheartedly, first in filing and first in use principle. However, the bill that you have before you is directed not on those prior filings, but on new filings of water post 1973.

I am sure all of you are aware, there are unappropriated waters in the State of Montana and the new filing process that was initiated in 1973 is to make those unappropriated waters available to new applicants. This includes not only surface water but underground water applications.

With regard to the surface water in the upper reaches of the Missouri River drainage, I think it is safe to say that the water flow from those drainages in the upper reaches has been already appropriated many times over. And, as a consequence, there are no surface waters available for new application. This is not necessarily true with the underground water. With the surface water, you can see it. With the underground water, it is more difficult to predicting where, in what amounts and in what direction the water flows

The present legislation that is in effect - and has been since 1973 - provides for a process by which applicants can file on unappropriated waters so long as they meet certain criteria. It has been my experience both as an applicant and as an objector that the criteria is so loose and nebulous that the DNR is fully within its rights to issue a permit on a new application ~~without the applicant meeting very stringent criteria~~.

What I would like to do with my legislation - and you can see it there before you - is to make it more stringent upon the applicant to prove to the DNR in the hearing process, to prove the criteria. This, in effect, is putting the burden of proof where it should be - with the applicant, that he show "with clear and convincing evidence" that these criteria have been met. First off, there is unappropriated waters at the source of supply. Secondly, that no prior rights will be adversely affected. This is where the burden should be. But, as the law stands today, without my bill, what happens is the applicant attends the water hearing; the objections are heard and because the applicant uses "substantial credible evidence", the DNR will go ahead and issue the permit and then if there are adverse affects to prior rights, the burden is transferred from the applicant to the objector. And the objector has two courses of action -- he can, on the one hand, say to himself, "well, I can get along without that water; I have lost that water to the new applicant", or he can go into District Court which is very expensive. I guess there is one other option he can take. He can go to his neighbor and say, "Hey Joe, you dried up my well when you started pumping from yours",

EXHIBIT 1
DATE 2-8-89
HB 542

and Joe is more than likely to say, "I got a permit from the DNR that it was all right " What happens with this kind of a senario is that the DNR has made enemies out of neighbors -- people who have gotten along for years.

So, that is the reason for my recommending the change in the statute -- to make it more stringent upon the applicant through "clear and convincing evidence" and not "substantial credible evidence" to prove the criteria.

I will reserve my closing remarks until after the proponents and opponents have been heard.

Thank you.

BG:bd

EXHIBIT 2
DATE 2-8-89
HB 542

House Bill 542
House Natural Resources Committee
February 8, 1989

TESTIMONY PREPARED BY JACK SALMOND, WESTERN ENVIRONMENTAL TRADE ASSOCIATION

Mr. Chairman and members of the committee, my name is Jack Salmond representing Western Environmental Trade Association or WETA. WETA is in support of HB 542. I am also testifying as an individual who is impacted by this bill.

I live on the Teton River and have an adjudicated right for 100 inches of water or 2.5 cubic feet. The historical demands of water on this stream seem to indicate that the allocation of water can and will be controversial. Therefore, I am very sensitive to futher applicants applying for use on this stream. This bill brings those applicants who apply for a permit of less than 5.5 cubic feet of water under the same standards as other water users when a valid objection is filed. The addition of the words "clear and convincing evidence" will put a more stringent interpretation on the criteria the applicant must use if an objection arises.

The gathering of data in this process is crucial, therefore we support section four on page five of this bill.

I urge this committee to vote yes on HB 542.

Thank you again, Mr. Chairman and members of the committee for the opportunity to offer my comments today.

EXHIBIT 3
DATE 2-8-89
HB 542

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

BILL # HB 542 ; TESTIMONY BY: Andrew Neal

DATE Feb. 8, 1989 ; SUPPORT Yes ; OPPOSE _____

Mr. Chairman, members of the committee, for the record my name is Andy Neal, representing approximately 3600 Farm Bureau members in Montana.

Farm Bureau supports HB 542, we believe this bill puts the burden of proof on the applicant for new water permits. It provides that the applicant must provide clear and convincing evidence for issuance of new permits. It would protect the current user by not adversely affecting their rights. We strongly recommend support of this bill.

SIGNED: _____

MONTANA STOCKGROWERS ASSOCIATION, INC.

P.O. BOX 1679 – 420 NO. CALIFORNIA ST. – PHONE (406) 442-3420 – HELENA, MONTANA 59624

OFFICERS:

WM. J. BROWN, JR.	SAND SPRINGS	PRESIDENT
JAMES COURTNEY	ALZADA	FIRST VICE PRESIDENT
EDWARD J. LORD	PHILIPSBURG	SECOND VICE PRESIDENT
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KIM ENKERUD	HELENA	NATURAL RESOURCES COORDINATOR

EXECUTIVE COMMITTEE:

CLARENCE BLUNT	REGINA	WM. T. HARRER	FORT BENTON
BILL CHRISTENSEN	HOT SPRINGS	KNUTE HEREIM	MARTINSDALE
LYNN CORNWELL	GLASGOW	EARL LINDGREN	JOLIET
M.E. EDDLEMAN	WORDEN	ROLAND MOSHER	AUGUSTA
NANCY ESPY	BOYES	GREG RICE	HARRISON

Mr. Chairman and Members of the Natural Resources Committee

My name is Carol Mosher and today I represent the Montana Stockgrowers Association, the Montana CattleWomen and the Montana Association of State Grazing Districts.

We are in support of HB 542, primarily because it will heighten the awareness of the DNRC of the many problems which exist with the applications and granting of permits.

Opponents of this bill will say that this legislation raises the burden of proof too high for an applicant to receive a permit. Members of our organizations see both sides of this argument. HB 542 is a bill that is protective of existing water users rights. However, for new water users, it will be harder to get a permit. We believe that if aquifers are being depleted in an area, then tougher restrictions on well permits may be needed.

In closing, we feel this bill does not make it impossible to obtain a permit, but does impose a higher standard to obtain one than what is now required.

Thank you for the opportunity to testify in support of this bill.

EXHIBIT 4
DATE 2-8-89
HB 542

Teton River Water Users Association

Choteau, Montana 59422

2-8-89
EXHIBIT 5
DATE 2-8-89
HB 542

Chairman
Members of The Committe

We, the TETON RIVER WATER USERS ASSOCIATION strongly support this bill. We for a number of years have felt that the law as it presently is in regards to applications for a new water right has been flawed, in that it put the burden of proof on the objectors. At present it costs water users thousands of dollars to just protect that which is theirs from someone who wants it. It would seem that if someone is to gain a asset such as a wter right there should be a cost attached to it, Therefore proving in a clear and convincing manner that prior right water users will not be damaged is no more than right.

Respectfully

Leonard Blixrud
President

VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO. HB 542 DATE 2-8-89

SPONSOR Gutsche

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Salmond	WETA	X	
Andy Neal	Montana Farm Bureau	X	
Lo Ly Fitzpatrick	Helena		X
John Thorson	Doney + Thorson - Helena		—
Teton River Water Users Assn Leonard Blixrud	Choteau, MT	X	
Kay Anderson	Choteau, MT.	X	
Carol Mosher	Mt Stockgrowers	X	
Mt Stockgrowers Assn		X	
Sidney Cole	Choteau, MT	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on February 13, 1989, at 3:00 p.m.

ROLL CALL

Members Present: All members present except:

Members Excused: Rep. Cohen

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: None

HEARING ON HB 608

Presentation and Opening Statement by Sponsor:

REP. TIM WHALEN, House District 93, presented HB 608, a bill which would require industries in Montana that emit more than a thousand tons of sulfur dioxide annually to either have in-stack monitors, commonly known as continuous emission monitors or CEM's, or to install equipment or a process to enable them to clean up these emissions to the latest standards available in the industry. He said that with Rep. Hannah's legislation passed last session to relax the state standard in Yellowstone County, the monitors placed in Yellowstone County from Rep. Addy's bill and the formation of BLAQTC (Billing Laurel Air Quality Technical Committee), difficulties had developed in producing data that was relevant. He said that in essence, a license to emit more sulfur dioxide, especially in Billings, had been created.

REP. WHALEN said that HB 608 had arisen in response to these difficulties, and that members of the Yellowstone Valley Citizens Council, a group that had been following the issue for the past two years, were present to testify. He also said that Wayne Mahan, Chief Development Engineer at Cenex, would be available as a resource person on the economics of stack scrubbing.

Testifying Proponents and Who They Represent:

DISPOSITION OF HB 542

Hearing 2/8/89

Motion: REP. HARPER moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. HARPER moved amendments contained in EXHIBIT 19. He described the amendments, which principally substituted "substantial credible" evidence for "clear and convincing" evidence in the bill.

REP. HANNAH asked if these changes could be made when "clear and convincing" was in the title. REP. HARPER said it was a two part bill, with the amendments referring to the second part of the bill. He said Rep. Guthrie had been advised of the changes and had no objections. REP. RANEY said the researcher indicated the title was properly amended.

The motion on the amendments CARRIED with Rep. Hannah voting no.

Recommendation, Discussion, and Vote: REP. HARPER moved the bill DO PASS AS AMENDED. REP. O'KEEFE reminded the committee that "clear and convincing" evidence kicked us into an Instream Flow. He said if it did not, it would at least kick the state into such a financial burden to prove it that the average Montanan would never get another water permit. The motion CARRIED with Rep. Gilbert voting no.

DISPOSITION OF HB 498

Hearing 2/6/89

Motion: REP. HARPER moved to remove the bill from the table.

Discussion: REP. HARPER said that a letter had been received from the Board of Water Well Contractors which indicated that a tag could be used.

REP. RANEY said he and the committee members had received the same letter from Montana Board of Water Well Contractors, but no amendment had been drafted.

REP. ROTH said the bill was unnecessary because wells were already marked. He said the tag was a cumbersome requirement and recommended the bill be left on the table.

REP. KADAS asked if there were amendments to discuss, and REP. RANEY said no. He said the board felt it could best be handled by administrative rules.

REP. HANNAH suggested leaving the bill on the table until the amendment was developed and brought to the committee by the sponsor, Rep. Grady.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2/13/89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman			✓
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

EXHIBIT 19
DATE 2-13-89
HB 542

Amendments to House Bill No. 542
Introduced Copy

Requested by Rep. Harper
For the House Committee on Natural Resources

Prepared by H. Zackheim
February 10, 1989

1. Title, lines 4 through 7.
Strike: "CHANGING" on line 4 through ";" on line 7
Following: "REQUIRING" on line 7
Strike: "THE"
Insert: "AN"

2. Title, lines 8 and 9.
Following: "APPLICANT"
Insert: "FOR A WATER USE PERMIT"
Strike: "CLEAR" on line 8 through "CONVINCING" on line 9
Insert: "SUBSTANTIAL CREDIBLE"

3. Page 1, lines 17 through 19.
Strike: ", or" on line 17 through "part," on line 19

4. Page 5, line 7.
Strike: "clear and convincing"
Insert: "substantial credible"

5. Page 5, line 9.
Following: "evidence"
Insert: ", including water supply data, field reports, and other information developed by the department, the U. S. geological survey, or the U. S. soil conservation service and other specific field studies,"

STANDING COMMITTEE REPORT

February 14, 1989

Mr. Speaker: We, the committee on Natural Resources report that HOUSE BILL 542 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Raney, Chairman

And, that such amendments read:

1. Title, lines 4 through 7.
Strike: "CHANGING" on line 4 through ";" on line 7
Following: "REQUIRING" on line 7
Strike: "THE"
Insert: "AN"

2. Title, lines 8 and 9.
Following: "APPLICANT"
Insert: "FOR A WATER USE PERMIT"
Strike: "CLEAR" on line 8 through "CONVINCING" on line 9
Insert: "SUBSTANTIAL CREDIBLE"

3. Page 1, lines 17 through 19.
Strike: "; or" on line 17 through "part," on line 19

4. Page 5, line 7.
Strike: "clear and convincing"
Insert: "substantial credible"

5. Page 5, line 9.
Following: "evidence"
Insert: ", including water supply data, field reports, and other information developed by the department, the U. S. geological survey, or the U. S. soil conservation service and other specific field studies,"

Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Steppler, Stickney, Strizich, Swift, Swysgood, Thoft, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 93

Noes: D. Brown, Campbell, Giacometto, Gilbert, Hannah, T. Nelson, Stang.
Total 7

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 542 - Representative Guthrie moved HB 542 do pass. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, Brooke, J. Brown, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Swysgood, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 95

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: D. Brown, Campbell, Hayne, Knapp, Thoft.
Total 5

HB 543 - Representative Connelly moved HB 543 do pass. Motion carried as follows:

Ayes: Addy, Bachini, Bradley, Brooke, D. Brown, J. Brown, Clark, Cocchiarella, Cody, Cohen, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Gervais, Glaser, Gould, Grady, Hansen, Harper, Harrington, Hayne, Hoffman, Johnson, Kadas, Kilpatrick, Kimberley, Knapp, McCormick, McDonough, Menahan, Moore, R. Nelson, Nisbet, O'Connell, O'Keefe, Pavlovich, Peterson, Quilici, Raney, Ream, Roth, Russell, Schye, Spring, Stang, Stickney, Strizich, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 58

Noes: Aafedt, Bardanouve, Boharski, Campbell, Cobb, Compton, Elliott, Ellison, Eudaily, Giacometto, Gilbert, Good, Grinde, Guthrie, Hannah,

Hanson, Iverson, Kasten, Keller, Koehnke, Lee, Marks, Mercer, T. Nelson, Owens, Patterson, Peck, Ramirez, Rehberg, Rice, Simon, Simpkins, Smith, Spaeth, Steppler, Swift, Swysgood, Thoft.
Total 38

Excused: None.
Total 0

Absent or not voting: Blotkamp, L. Nelson, Phillips, Squires.
Total 4

HB 554 - Representative Addy moved HB 554 do pass. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Boharski, Bradley, Brooke, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Squires, Stang, Stickney, Strizich, Swift, Swysgood, Thoft, Thomas, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 95

Noes: Spring, Steppler.
Total 2

Excused: None.
Total 0

Absent or not voting: Blotkamp, T. Nelson, Wallin.
Total 3

HB 558 - Representative Kilpatrick moved HB 558 do pass. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, Brooke, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rice, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swysgood, Thoft, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 94

Noes: Gilbert.
Total 1

Excused: None.
Total 0

Absent or not voting: Davis, Hoffman, Rehberg, Roth, Swift.
Total 5

Total 0

HB 540 passed as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, Brooke, D. Brown, J. Brown, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Good, Gould, Grady, Grinde, Guthrie, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Lee, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Steppler, Stickney, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 88

Noes: Campbell, Giacometto, Gilbert, Glaser, Hannah, Koehnke, Marks, T. Nelson, Stang.
Total 9

Excused: Strizich, Swysgood, Thoft.
Total 3

Absent or not voting: None.
Total 0

HB 541 passed as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, Brooke, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Squires, Stang, Steppler, Stickney, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 96

Noes: None.
Total 0

Excused: Strizich, Swysgood, Thoft.
Total 3

Absent or not voting: Spring.
Total 1

HB 542 passed as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, Brooke, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet,

O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 95

Noes: Cohen.
Total 1

Excused: Strizich, Swysgood, Thoft.
Total 3

Absent or not voting: Good.
Total 1

HB 544 passed as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, Brooke, D. Brown, J. Brown, Campbell, Clark, Cobb, Cody, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Swift, Thomas, Wallin, Westlake, Zook, Mr. Speaker.
Total 90

Noes: Cocchiarella, Cohen, Driscoll, McDonough, Ream, Whalen, Wyatt.
Total 7

Excused: Strizich, Swysgood, Thoft.
Total 3

Absent or not voting: None.
Total 0

HB 554 passed as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, Brooke, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Squires, Stang, Stickney, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 95

Noes: Spring, Steppler.
Total 2

Excused: Strizich, Swysgood, Thoft.
Total 3

HOUSE BILL NO. 542

INTRODUCED BY GUTHRIE, AKLESTAD, HAYNE, WESTLAKE, CAMPBELL, COBB, ELLIOTT, WILLIAMS, DEMARS, KOEHNKE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED;~~ REQUIRING ~~THE~~ AN APPLICANT FOR A WATER USE PERMIT TO SUBMIT INDEPENDENT EVIDENCE TO MEET THE ~~CLEAR AND CONVINCING~~ SUBSTANTIAL CREDIBLE EVIDENCE STANDARD; AMENDING SECTION 85-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) Except as provided in subsections (2) ~~through (4)~~ and (3), the department shall issue a permit if the applicant proves by substantial credible evidence~~, or by clear and convincing evidence if a valid objection to the application is filed according to this part,~~ that the following criteria are met:

(a) there are unappropriated waters in the source of supply:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(2) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water

THIRD READING

supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(3) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this

subsection (3) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (2) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (3)(b)(ii) and (3)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use

the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(4) To meet the ~~clear--and--convincing~~ SUBSTANTIAL CREDIBLE evidence standard in this section, the applicant shall submit independent hydrologic or other evidence, INCLUDING WATER SUPPLY DATA, FIELD REPORTS, AND OTHER INFORMATION DEVELOPED BY THE DEPARTMENT, THE U.S. GEOLOGICAL SURVEY, OR THE U.S. SOIL CONSERVATION SERVICE AND OTHER SPECIFIC FIELD STUDIES, demonstrating that the criteria are met.

(5) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. ~~No~~ An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner ~~such~~ an unauthorized appropriation, diversion, impoundment, use, or other restraint. ~~No~~ A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to

appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

NEW SECTION. **Section 2.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 3.** Effective date. [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on March 13, 1989, at 1:00 P.M.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator Gary Aklestad, Senator Esther Bengtson, Senator Gerry Devlin, Senator Jack Galt, Senator Greg Jergeson, Senator Gene Thayer, Senator Bob Williams, and Senator Tom Beck

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 516

Presentation and Opening Statement by Sponsor:

Representative Marian Hanson, House District 100, stated that HB 516 was before the committee two years ago. She stated there had been some changes on page 2, line 7 through 12. This section states when there is a substantial difference in terrain. That was some of the hang up when we were here two years ago and we tried to address the concerns that were brought here last time. This bill will not affect a herd district in any way. It will not affect open range law."

List of Testifying Proponents and What Group They Represent:

Charlie Honencamp representing the RCNG
Tom Hopgood representing Montana Association of Realtors
Jerry Jack representing the Montana Stockgrowers Association, the Montana CattleWomen and WIFE

List of Testifying Opponents and What Group They Represent:

None

that says open range is all areas of the state except what has been fenced. It doesn't address how you maintain that fence at all."

Senator Bengtson - "Is there a penalty?" Representative Hanson - "There is no penalty anywhere addressed."

Senator Bengtson - "This language just tells what your rights are and if it doesn't work out then you take it to court." Representative Hanson - "There are time-frames you have to work on this. If you can't get you neighbor to fence at all, you may send him written notice and within five days you may respond and go in and fix the fence. If he doesn't pay you for fixing the fence, then you take him to court. The same goes for rebuilding a fence, only you have to give written notice of 60 days."

Closing by Sponsor: Representative Hanson - "I feel good fences make good neighbors. I urge you to pass this bill."

HEARING ON HOUSE BILL 542

Presentation and Opening Statement by Sponsor:
Representative Guthrie, House District 11, "I am sure that you all aware there are unappropriated waters in the State of Montana. The new filing process, that was initiated in 1973, is to make those unappropriated waters available to new applicants. This includes, not only surface water, but underground water applications. With regards to the surface water in the upper reaches of the Missouri river drainage, I think it is safe to say that the water flow from these drainages in the higher reaches has already been appropriated many times over. As a consequence, there is no surface water available for new applications. This is not necessarily true with the underground water. With the surface water you can see it. With the underground water, it is more difficult to predict where, in what amounts, and in what direction the water flows. The present legislation that it affects and has been since 1973, provides for a proces by which applicants can file on unappropriated waters...What I would like to do with my legislation is to make it more stringent upon the applicant to prove, to the DNRC in the hearing process, that criteria. This, in effect, is putting the burden of proof where is should be with the applicant. As the law stands today, without my bill, what happens is that the applicant appears at the water hearing. The objections are heard, and because the applicant uses `substantial credible evidence', the

DNRC will go ahead and issue the permit. Then, if there are adverse affects to prior rights, the burden is transferred from the applicant on to the objector. This will show that he has been adversely affected. The objector has two courses of action. He can on the one hand, say to himself well I can get along without that water and I have lost that water to the new applicant or I can go into District Court, which as you all know is expensive. There is one objection he can take. He can go to his neighbor and say you dried up my well when you started pumping from your new well. The neighbor is going to say, I got a permit from the DNRC that says I can. What happens the DNRC has made enemies out of the neighbors. I want to make it more stringent upon the applicant through `clear and convincing evidence', and not `substantial credible evidence' to prove the criteria." Representative Guthrie submitted amendments. See exhibit 2.

List of Testifying Proponents and What Group They Represent:

Jack Salmond representing himself
Valerie Larson representing the Montana Farm Bureau
Kim Enkerud representing the Montana Stockgrowers Association and the Montana CattleWomen Association
Jo Brunner representing the Montana Water Resource Council
Ted Doney representing himself

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Jack Salmond - "I have been impacted by this bill. I live on the Teton River and have an adjudicated right for 2 and half cubic feet. The demands of water on this stream indicate that the allocation of water can and will be controversial. Therefore, I am very sensitive to further applicants applying for use on this stream. This bill brings those applicants that apply for a permit of less than 5.5 cubic feet of water under the same standards other water users valid objection is fine. The words `clear and convincing evidence' will put a more stringent interpretation on the criteria the applicant must use if an objection arises. I therefore, support section four on page 5 and the amendments that add `clear and convincing evidence' back into this bill." See exhibit 2.

Valerie Larson - "Farm Bureau supports this bill. We believe this bill puts the burden of proof on the applicant of the new water permit. It also helps the DNRC by not forcing them to grant permits that are all shaky."

Kim Enkerud - "We support this bill."

Jo Brunner - "Our association has votes for this bill without the amendments."

Ted Doney - "I too, support this bill as it is now written in front of you. It was introduced and our firm testified against the bill in the House. The problem we have here is not easy to explain. The problem Representative Guthrie has in his area is a problem. The department has been issuing permits up there that has adversely affected other water users...It's a problem with ground water, but it's not much of a problem with surface water. You can pretty well tell by measuring it, if there's going to be water to appropriate. Somebody comes in with a new permit application. There have been studies made in Representative Guthrie's area, but you still don't know how much water is in the ground for appropriation. The department issues a permit something goes wrong there is bad feelings. The problem here is if you raise the standard of proof, that will apply state wide. He's trying to take care of a problem here that's in his area and it is going to affect everybody in the state. The standard of proof of `clear and convincing evidence' is very difficult to prove. It's the highest standard of proof in a civil case in court. I think it will be very difficult to prove by `clear and convincing evidence' that there is water to appropriate especially ground water. It will mean in many parts of the state--shutting down the permits. Denying people permits...The House amendments will make it tougher. I don't think it will make it so tough, we're not going to have any water to develop in the State of Montana. I support the bill with the House amendments on it."

Questions From Committee Members: Senator Thayer - "The last two proponents spoke in favor of the bill with the House amendments. I was curious if the other proponents were in favor of the bill if we amended it back to its original form?" Jack Salmond - "I think the bill is an improvement by requiring the applicants the things they have to do. I agree with Representative Guthrie amendments." Carol Mosher - "Our testimony was based on the original bill (without

the House amendments)."

Closing by Sponsor: Representative Guthrie - "The DNRC represents people. When they issue permits that are not based on all the facts that could be made available, we have a situation of distrust. those prior right holders feel their claims are being threaten. I urge you to support HB 542."

Senator Aklestad was assigned to carry HB 542.

HEARING ON HOUSE BILL 477

Presentation and Opening Statement by Sponsor:
Representative Grady, House District 47, stated, "Weeds infest 6.5 million acres of range land costing the State of Montana an estimated 47 million annually. Vehicles have been shown to be one of the major contributors to the spread of noxious weeds in Montana...All proceeds collected will be used for chemical and nonchemical noxious weed management programs. Section one assess a $1 fee in lure per tax on all highway vehicles which is something new. Off highway vehicles have never had to address the weed problem. As we all know, they are the main contributors to the spread of weeds. The revenue is deposited into a weed trust fund. Section two increases the weed control fee on vehicles from .50 to a $1.50 for weed management projects." See exhibit 4 and 5.

List of Testifying Proponents and What Group They Represent:

Mike Murphy representing the Department of Agriculture
Kim Enkerud representing the Montana Stockgrowers Association the Montana CattleWomen, the Montana Association of State Grazing Districts, and the Montana Wool Growers
Charlie Hahnkamp representing himself
Peggy Haaglund representing the Montana Association of Conservation Districts #8
Neal Peterson representing the Montana Weed Control Association, the Headwaters RC&D Range Committee and the Madison County Weed Control Board
Dave Pickett representing the Butte-Silver Bow Weed Board
Linda Ellison the Montana Trailbike Association
Kay Norenberg representing WIFE
Tom Hopgood representing the Montana Association of Realtors
Jim Holmon representing the Lewis and Clark Weed

ROLL CALL

AGRICULTURE COMMITTEE

DATE 3/13/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	✓		
SENATOR GARY AKLESTAD	✓		
SENATOR ESTHER BENGTSON	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.

SENATE AGRICULTURE
EXHIBIT NO. 2
DATE 3/13/89
BILL NO. HB 542

Proposed Amendments to House Bill No. 542
Third Reading Copy

Requested by Representative Guthrie
For the Senate Committee on Agriculture, Livestock and Irrigation

March 13, 1989

1. Title, line 8.
Following: "~~FILED;~~"
Insert: "CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED;"

2. Title, lines 10 and 11.
Following: "~~CONVINCING~~"
Strike: "SUBSTANTIAL CREDIBLE"
Insert: "CLEAR AND CONVINCING"

3. Page 1, line 21.
Following: "~~part,~~"
Insert: ", or by clear and convincing evidence if a valid objection to the application is filed according to this part,"

4. Page 5, lines 9 and 10.
Following: "~~convincing~~" on line 9
Strike: "SUBSTANTIAL CREDIBLE"
Insert: "clear and convincing"

SENATE AGRICULTURE
EXHIBIT NO. 3
DATE 3/13/89
BILL NO. HB 477, 516, 542, 655

BILL SUMMARY--SENATE AGRICULTURE COMMITTEE
MARCH 13, 1989
PREPARED BY DOUG STERNBERG, COMMITTEE STAFF

HB 477 Section 1: increases fee for 1- or 2-year-old off-highway vehicle from $25 to $26; increases fee on all other off-highway vehicles from $15 to $16; allows for remission of the $1 fee increase to the Dept. of Agriculture noxious weed management fund

Section 2: increases annual weed control fee on all motor vehicle registrations from 50 cents to $1.50

Section 3: coordinates HB 477 fee increase with fee increase in HB 165 on off-highway vehicles

Section 4: provides July 1, 1989, effective date

HB 516 Section 1: requires that landowners maintain half of the fence along the land boundary unless otherwise provided; allows for maintenance responsibility by mutual agreement if there is a substantial difference in terrain or topographical features

Section 2: standard saving clause

HB 542 Section 1: requires submission of independent hydrologic or other specific evidence in order to meet the standard of criteria necessary for issuance of a water use permit

Section 2: extends present agency rulemaking authority

Section 3: provides an immediate effective date

HB 655 Section 1: short title

Section 2: outlines purpose and intent of the Smith River Management Act

Section 3: defines "commission" and "department"

Section 4: describes the part of Smith River subject to management under the Act

Section 5: assigns primary management responsibility of the Smith River waterway to the Department of Fish, Wildlife, and Parks; outlines management plan administration

Section 6: grants rulemaking authority to the Fish and Game Commission and outlines topics that rules may address, including implementation of a permit system

Section 7: allocates user fees to the state revenue fund for the use of the Department of Fish, Wildlife, and Parks

Section 8: provides a penalty for violation of a rule adopted under the Act

Section 9: extends present agency rulemaking authority

Section 10: standard severability clause

Section 11: provides immediate effective date

DATE 3/13/89

COMMITTEE ON Aquaculture 1 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Kim Enkerud	MT Stockgrowers, Cattlewomen	655	✓	
" "	State Grazing Dist.	477	✓	
Tom Hopgood	Mont Assoc. Realtors	477/516	✓	
Jothy Halvorsd	WETA	542	✓	
Marvin Barber	[redacted] MPPA	542 516	✓ ✓	
John Eckhardt		655		✓
Jack Sedgwick	Livestock	516	✓	
John Skufca	"	"	✓	
Stan Bradshaw	Forest Unlimited	655	✓	
Linda Ellison	MT Trail Bike Riders Assn	477	✓	
Janet Ellis	Audubon Society	477	✓	
Neil O. Peterson	Mt Weed Control Assoc Madison Co Weed	477	✓	
Jerry Dick	MT Stockgrowers, Cattlewomen - Assoc of St. Grazing Dist	516	✓	
Peggy Haagsma	MT Assoc. of Conservation Dist	477	✓	
Monte Clemons	Livestock	477	✓	
Robert Hanson	Self	655		✓
ELLEN BERG	SELF	655		✓
George Bolz	self	655		✓
RE Saunders	Self	655		✓
Dave Pickett	Bottle Weed Board	477	✓	
Bob Lane	FWP	655		
Dave Todd	FWP	655		
Valerie Lagon	Farm Bureau	HB 477	✓	
Valerie Lagon	Farm Bureau	HB 516	X	
Valerie Lagon	Farm Bureau	HB 542	X	
Kay Wiedenbenner	WIFE	477	X	

(Please leave prepared statement with Secretary)

DATE 3/13/89

COMMITTEE ON Agriculture 2 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppo
Mike Bay	self	655	X	
Jim Jensen	MEIC - Box 1184 Helena	~~677~~ 477	X	
11		655	X	
Charles Hohnkamp	Headwaters RC&D	177	X	
Ron Marcoux	F&WP	655	X	

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on March 17, 1989, at 1:00 p.m.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator Gary Aklestad, Senator Esther Bengtson, Senator Gerry Devlin, Senator Jack Galt, Senator Greg Jergeson, Senator Gene Thayer, Senator Bob Williams, and Chairman Tom Beck

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 413

Discussion: Doug Sternberg explains the amendments to HB 413. See exhibit 1.

Senator Aklestad-"Was there something brought up about a fiscal note? Was there one prepared for it?" Senator Beck-"I don't think there was."

Representative Westlake-"We requested that to be looked at when the EQC drew this up in the first place. They said no there is no need of a fiscal note."

Amendments and Votes: Senator Devlin moved the amendments to HB 413; the motion was seconded by Senator Aklestad. The motion carried unanimously.

Recommendation and Vote: Senator Thayer moved HB 413 BE CONCURRED IN AS AMENDED; the motion was seconded by Senator Aklestad. The motion carried unanimously. Senator Boylan was assigned to carry the bill.

DISPOSITION OF HOUSE BILL 542

Discussion: Doug Sternberg explained the amendments to HB 542. See exhibit 2.

Senator Galt wanted to know the definitions of "clear and convincing" and "substantial credible". Don MacIntyre- "The burden of proof is by a standard either clear and convincing or substantial credible. You're saying that burden remains on that party throughout the process. In law there are basically three standards. The standards are preponderance of evidence, clear and convincing evidence, and beyond a reasonable doubt. Beyond a reasonable doubt is saved for criminal cases. The basic standard in courtroom work is preponderance of evidence. Clear and convincing is saved for special cases. Substantial credible is generally a reviewing standard. For example, after a trial you go to the Montana Supreme Court, the Montana Supreme Court would look at the record to see whether there was substantial evidence in the record to uphold the verdict. If they though there was they wouldn't do it. The term substantial credible has snuck in, in my opinion, to replace preponderance of the evidence. Clear and convincing is a much higher standard. Clear and convincing is the words indicating the evidence is very strong evidence. You are convinced as a reasonable person that the fact that should be believed. When you are generally talking about substantial credible, substantial evidence can be made by one witness. There could be seven witnesses on the other side that are arguing the other side of the issue. Substantial evidence can be produced by the one witness."

Amendments and Votes: Senator Thayer move the amendment to HB 542; the motion was seconded by Senator Aklestad. The motion carried with Senator Bengtson voting no.

Recommendation and Vote: Senator Aklestad moved HB 542 BE CONCURRED AS AMENDED; Senator Devlin seconded the motion. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 399

Discussion: Ron Waterman explained the proposed amendment on page 5, line 8.

Senator Aklestad-"The existing water rights that burden of proof would have to be placed on the new appropriator, does that...?"

Senator Beck-"That's the way I understand it."

Senator Aklestad-"Is that right, Mr. Waterman? The new applicant would have to bear the burden of proof that

ROLL CALL

AGRICULTURE COMMITTEE

DATE 3/17/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	✓		
SENATOR GARY AKLESTAD	✓		
SENATOR ESTHER BENGTSON	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.

SENATE AGRICULTURE
EXHIBIT NO. 2
DATE 3/13/89
BILL NO. HB 542

Proposed Amendments to House Bill No. 542
Third Reading Copy

Requested by Representative Guthrie
For the Senate Committee on Agriculture, Livestock and Irrigation

March 13, 1989

1. Title, line 8.
Following: "~~FILED;~~"
Insert: "CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED;"

2. Title, lines 10 and 11.
Following: "~~CONVINCING~~"
Strike: "SUBSTANTIAL CREDIBLE"
Insert: "CLEAR AND CONVINCING"

3. Page 1, line 21.
Following: "~~part,~~"
Insert: ", or by clear and convincing evidence if a valid objection to the application is filed according to this part,"

4. Page 5, lines 9 and 10.
Following: "~~convincing~~" on line 9
Strike: "SUBSTANTIAL CREDIBLE"
Insert: "clear and convincing"

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 542 (third reading copy -- blue), respectfully report that HB 542 be amended and as so amended be concurred in:

Sponsor: Guthrie (Aklestad)

1. Title, line 8.
Following: "~~FILED,~~"
Insert: "CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED;"

2. Title, lines 10 and 11.
Following: "~~CONVINCING~~"
Strike: "SUBSTANTIAL CREDIBLE"
Insert: "CLEAR AND CONVINCING"

3. Page 1, line 21.
Following: "~~part,~~"
Insert: ", or by clear and convincing evidence if a valid objection to the application is filed according to this part,"

4. Page 5, lines 9 and 10.
Following: "~~convincing~~" on line 9
Strike: "SUBSTANTIAL CREDIBLE"
Insert: "clear and convincing"

AND AS AMENDED BE CONCURRED IN

Signed: Thomas A Beck
Thomas A. Beck, Chairman

HB 542 SENATE

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 22, 1989 9:58 am

Mr. Chairman: I move to amend HB 542 (third reading copy -- blue) as follows:

1. Strike: The Senate Committee on Agriculture, Livestock, and Irrigation amendments to HB 542 (third reading copy -- blue) dated March 20, 1989, in their entirety

ADOPT

REJECT

Signed: _____
Senator Mazurek

SENATE
HB 542

Following: "hearing"
Insert: "; and

(iii) notifying the governor's office of budget and program planning and the department of revenue about a proposed action to suspend or cancel delinquent property taxes. The governor's office of budget and program planning and the department of revenue shall consult with the governing body regarding the impact on programs that would result from the proposed granting of the suspension or cancellation of the delinquent property taxes and the governing body shall consider the information before reaching a final decision"
Following: "."
Insert: "(b)"

and that this conference committee report be adopted.

For the Senate:	For the House:
Crippen, Chairman	Driscoll
Hager	Ramirez
Regan	Harrington

Report adopted.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator Gage moved that the Senate resolve itself into a committee of the whole for the consideration of business on second reading. Motion carried. Senator Harp in the chair.

Mr. President: We, your Committee of the Whole having had under consideration business on second reading, recommend as follows:

HB 577 - Senator Story moved that HB 577 be amended as follows:

1. Page 3, line 24.
Following: "acquire"
Insert: ", except by condemnation,"

Amendment adopted unanimously, 49-0.

Senator McLane moved that HB 577 as amended be concurred in. Motion carried unanimously, 49-0.

HB 367 - Senator Weeding moved that HB 367 be concurred in. Motion carried 48-1; Hager voting no.

HB 425 - Senator Pinsoneault moved that HB 425 be concurred in. Motion carried as follows:

Ayes: Bengtson, Blaylock, Brown, Crippen, Eck, Gage, Harding, Harp, Himsl, Jacobson, Jergeson, Lynch, Manning, Mazurek, Norman, Pinsoneault, Pipinich, Rapp-Svrcek, Regan, Severson, Stimatz, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Yellowtail, Mr. President.
Total 28

Noes: Abrams, Aklestad, Anderson, Boylan, Devlin, Hager, Hofman, Jenkins, Keating, Nathe, Noble, Thayer, Williams.
Total 13

Excused: Farrell.
Total 1

Absent or not voting: Beck, Bishop, Halligan, Hammond, McLane, Meyer, Rasmussen, Story.
Total 8

HB 542 - Senator Mazurek moved to amend HB 542 as follows:

1. Strike: the Senate Committee on Agriculture, Livestock, and Irrigation amendments to HB 542 (third reading copy — blue) dated March 20, 1989, in their entirety

Amendment adopted as follows:

Ayes: Anderson, Bengtson, Bishop, Boylan, Brown, Devlin, Eck, Gage, Hager, Halligan, Hammond, Harding, Harp, Himsl, Jacobson, Jenkins, Jergeson, Lynch, Manning, Mazurek, McLane, Meyer, Noble, Norman, Pinsoneault, Pipinich, Rapp-Svrcek, Rasmussen, Regan, Severson, Stimatz, Tveit, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 37

Noes: Aklestad, Nathe, Story.
Total 3

Excused: Farrell.
Total 1

Absent or not voting: Abrams, Beck, Blaylock, Crippen, Hofman, Keating, Thayer, Van Valkenburg, Vaughn.
Total 9

Senator Aklestad moved that HB 542 as amended be concurred in. Motion carried as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bishop, Blaylock, Crippen, Gage, Halligan, Hammond, Harding, Harp, Himsl, Jenkins, Keating, Manning, McLane, Meyer, Noble, Norman, Pipinich, Severson, Stimatz, Story, Tveit, Van Valkenburg, Walker, Williams.
Total 28

Noes: Bengtson, Devlin, Jergeson, Mazurek, Nathe, Vaughn, Weeding, Yellowtail.
Total 8

Excused: Farrell.
Total 1

Absent or not voting: Boylan, Brown, Eck, Hager, Hofman, Jacobson, Lynch, Pinsoneault, Rapp-Svrcek, Rasmussen, Regan, Thayer, Mr. President.
Total 13

HB 73 - Senator Himsl moved that HB 73 be concurred in. Motion carried unanimously, 49-0.

HB 440 - Senator Walker moved that HB 440 be concurred in. Motion carried unanimously, 49-0.

Senator Gage moved the committee rise and report and beg leave to sit again. Motion carried. Chairman Harp moved the adoption of the committee report. Report adopted.

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Total 45

Noes: Bengtson, Boylan, Regan, Yellowtail.
Total 4

Excused: Hammond.
Total 1

Absent or not voting: None.
Total 0

HB 425 concurred in by the following vote:

Ayes: Bishop, Blaylock, Brown, Crippen, Eck, Farrell, Gage, Halligan, Harding, Harp, Himsl, Jacobson, Jergeson, Lynch, Mazurek, Norman, Pinsoneault, Pipinich, Rapp-Svrcek, Rasmussen, Regan, Severson, Stimatz, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Yellowtail.
Total 29

Noes: Abrams, Aklestad, Anderson, Beck, Bengtson, Boylan, Devlin, Hager, Hofman, Jenkins, Keating, Manning, McLane, Meyer, Nathe, Noble, Story, Thayer, Williams, Mr. President.
Total 20

Excused: Hammond.
Total 1

Absent or not voting: None.
Total 0

HB 440 concurred in by the following vote:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Devlin, Eck, Farrell, Gage, Hager, Halligan, Harding, Harp, Himsl, Hofman, Jacobson, Jenkins, Jergeson, Keating, Lynch, Manning, Mazurek, McLane, Meyer, Nathe, Noble, Norman, Pinsoneault, Pipinich, Rapp-Svrcek, Rasmussen, Regan, Severson, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Hammond.
Total 1

Absent or not voting: None.
Total 0

HB 458 concurred in by the following vote:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Brown, Crippen, Farrell, Gage, Halligan, Hammond, Harding, Harp, Himsl, Hofman, Jenkins, Keating, Manning, Mazurek, McLane, Meyer, Noble, Norman, Pinsoneault, Pipinich, Rapp-Svrcek, Rasmussen, Regan, Severson, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Yellowtail, Mr. President.
Total 41

Noes: Boylan, Devlin, Eck, Hager, Jacobson, Jergeson, Lynch, Nathe, Williams.
Total 9

Paired: Hammond, Aye; Jacobson, No.

Excused: None.
Total 0

Absent or not voting: None.
Total 0

HB 542 concurred in by the following vote:

Ayes: Abrams, Aklestad, Anderson, Beck, Bishop, Blaylock, Brown, Crippen, Eck, Farrell, Gage, Hager, Halligan, Harding, Himsl, Hofman, Jacobson, Jenkins, Keating, Lynch, McLane, Meyer, Noble, Norman, Rasmussen, Regan, Stimatz, Story, Thayer, Van Valkenburg, Vaughn, Walker, Williams, Mr. President.
Total 34

Noes: Bengtson, Boylan, Devlin, Harp, Jergeson, Manning, Mazurek, Nathe, Pinsoneault, Pipinich, Rapp-Svrcek, Severson, Tveit, Weeding, Yellowtail.
Total 15

Excused: Hammond.
Total 1

Absent or not voting: None.
Total 0

HB 571 concurred in by the following vote:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Devlin, Eck, Farrell, Gage, Hager, Halligan, Harding, Harp, Himsl, Hofman, Jacobson, Jergeson, Keating, Lynch, Manning, Mazurek, McLane, Meyer, Nathe, Noble, Norman, Pinsoneault, Pipinich, Rapp-Svrcek, Rasmussen, Regan, Severson, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 48

Noes: Jenkins.
Total 1

Excused: Hammond.
Total 1

Absent or not voting: None.
Total 0

HB 572 concurred in by the following vote:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Gage, Hager, Halligan, Harding, Himsl, Hofman, Jacobson, Jenkins, Jergeson, Keating, Lynch, Manning, Mazurek, McLane, Meyer, Noble, Norman, Pinsoneault, Pipinich, Rapp-Svrcek, Rasmussen, Regan, Severson, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 45

Noes: Devlin, Farrell, Harp, Nathe.
Total 4

Excused: Hammond.
Total 1

Total 1

HB 489 - Representative Rice moved Senate amendments to HB 489 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Gilbert, Glaser, Good, Gould, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Thomas, Wallin, Westlake, Wyatt, Zook, Mr. Speaker.
Total 87

Noes: Swysgood, Thoft.
Total 2

Excused: Brooke, Giacometto, Grinde, Ramirez, Rehberg, Whalen.
Total 6

Absent or not voting: D. Brown, Cody, Grady, Knapp, Patterson.
Total 5

Representative Grinde present at this time.

HB 495 - Representative Strizich moved Senate amendments to HB 495 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, J. Brown, Clark, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Gilbert, Glaser, Good, Gould, Grady, Guthrie, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rice, Roth, Russell, Schye, Simon, Simpkins, Spaeth, Spring, Squires, Stang, Stickney, Strizich, Swift, Thomas, Wallin, Westlake, Wyatt, Zook, Mr. Speaker.
Total 85

Noes: Campbell, Hannah, Smith, Steppler, Swysgood, Thoft.
Total 6

Excused: Brooke, Giacometto, Ramirez, Rehberg, Whalen.
Total 5

Absent or not voting: D. Brown, Cobb, Grinde, Marks.
Total 4

HB 518 - Representative Stickney moved Senate amendments to HB 518 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Bradley, J. Brown, Campbell, Clark, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten,

Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Stickney, Strizich, Swift, Swysgood, Thoft, Thomas, Wallin, Westlake, Wyatt, Zook, Mr. Speaker.
Total 87

Noes: Boharski, Hannah, Steppler.
Total 3

Excused: Brooke, Giacometto, Ramirez, Rehberg, Whalen.
Total 5

Absent or not voting: D. Brown, Cobb, Gilbert, Marks, Owens.
Total 5

Representative Whalen present at this time.

HB 536 - Representative J. Brown moved Senate amendments to HB 536 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Bradley, J. Brown, Clark, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, McCormick, McDonough, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Swysgood, Thoft, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 86

Noes: Boharski, Campbell, Glaser.
Total 3

Excused: Brooke, Giacometto, Ramirez, Rehberg.
Total 4

Absent or not voting: D. Brown, Cobb, Gilbert, Kadas, Marks, Menahan, Owens.
Total 7

HB 542 - Representative Guthrie moved Senate amendments to HB 542 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, McCormick, McDonough, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Stickney, Strizich, Swift, Swysgood, Thoft, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 92

Noes: None.
Total 0

Excused: Brooke, Giacometto, Ramirez, Rehberg.
Total 4

Absent or not voting: D. Brown, Marks, Menahan, Steppler.
Total 4

HB 544 - Representative Rice moved Senate amendments to HB 544 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, Bradley, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Gervais, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, McCormick, McDonough, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rice, Roth, Russell, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Stickney, Strizich, Swift, Swysgood, Thoft, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 90

Noes: None.
Total 0

Excused: Brooke, Giacometto, Ramirez, Rehberg.
Total 4

Absent or not voting: D. Brown, Eudaily, Marks, Menahan, Schye, Steppler.
Total 6

Representatives Giacometto, Ramirez, and Rehberg present at this time.

HB 561 - Representative Addy moved Senate amendments to HB 561 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Blotkamp, Boharski, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 91

Noes: Simpkins, Swysgood, Thoft.
Total 3

Excused: Brooke.
Total 1

Absent or not voting: Bardanouve, Bradley, Ellison, Eudaily, Kadas.
Total 5

HB 576 - Representative Roth moved Senate amendments to HB 576 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Blotkamp, Boharski, J. Brown, Campbell, Clark, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Gervais, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Swysgood, Thoft, Thomas, Wallin, Westlake, Whalen, Zook, Mr. Speaker.
Total 89

Noes: Cobb, Giacometto.
Total 2

Excused: Brooke.
Total 1

Absent or not voting: Bardanouve, Bradley, D. Brown, Eudaily, Kadas, R. Nelson, Owens, Wyatt.
Total 8

HB 577 - Representative Simon moved Senate amendments to HB 577 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Blotkamp, Boharski, Bradley, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hannah, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Lee, Marks, McCormick, McDonough, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Ramirez, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Swysgood, Thoft, Thomas, Wallin, Westlake, Whalen, Zook, Mr. Speaker.
Total 93

Noes: None.
Total 0

Excused: Brooke.
Total 1

Absent or not voting: Bardanouve, D. Brown, Eudaily, Menahan, Owens, Wyatt.
Total 6

HB 593 - Representative Russell moved Senate amendments to HB 593 be concurred in. Motion carried as follows:

Ayes: Aafedt, Addy, Bachini, Blotkamp, Boharski, Bradley, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison,

Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Stickney, Strizich, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 89

Noes: Cohen, Steppler.
Total 2

Excused: Brooke, Hannah, Lee, Ramirez, Swysgood, Thoft.
Total 6

Absent or not voting: Bradley, Owens, Quilici.
Total 3

HB 518, Senate amendments, concurred in as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Good, Gould, Grady, Grinde, Guthrie, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Stickney, Strizich, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 89

Noes: Boharski, Glaser, Steppler.
Total 3

Excused: Brooke, Hannah, Lee, Ramirez, Swysgood, Thoft.
Total 6

Absent or not voting: Bradley, Hansen.
Total 2

HB 536, Senate amendments, concurred in as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, D. Brown, J. Brown, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Thomas, Wallin, Westlake, Wyatt, Zook, Mr. Speaker.
Total 90

Noes: Campbell, Owens.
Total 2

Excused: Brooke, Hannah, Lee, Ramirez, Swysgood, Thoft.
Total 6

Absent or not voting: Bradley, Whalen.
Total 2

HB 542, Senate amendments, concurred in as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peterson, Phillips, Quilici, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 92

Noes: Peck.
Total 1

Excused: Brooke, Hannah, Lee, Ramirez, Swysgood, Thoft.
Total 6

Absent or not voting: Bradley.
Total 1

HB 544, Senate amendments, concurred in as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, D. Brown, J. Brown, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Guthrie, Hansen, Hanson, Harper, Harrington, Hayne, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rehberg, Rice, Roth, Russell, Schye, Simon, Simpkins, Smith, Spaeth, Spring, Squires, Stang, Steppler, Stickney, Strizich, Swift, Thomas, Wallin, Westlake, Whalen, Wyatt, Zook, Mr. Speaker.
Total 91

Noes: Campbell.
Total 1

Excused: Brooke, Hannah, Lee, Ramirez, Swysgood, Thoft.
Total 6

Absent or not voting: Bradley, Grinde.
Total 2

HB 561, Senate amendments, concurred in as follows:

Ayes: Aafedt, Addy, Bachini, Bardanouve, Blotkamp, Boharski, D. Brown, J. Brown, Campbell, Clark, Cobb, Cocchiarella, Cody, Cohen, Compton, Connelly, Daily, Darko, Davis, DeBruycker, DeMars, Driscoll, Elliott, Ellison, Eudaily, Gervais, Giacometto, Gilbert, Glaser, Good, Gould, Grady, Grinde, Guthrie, Hansen, Hanson, Harper, Harrington, Hoffman, Iverson, Johnson, Kadas, Kasten, Keller, Kilpatrick, Kimberley, Knapp, Koehnke, Marks, McCormick, McDonough, Menahan, Mercer, Moore, L. Nelson, R. Nelson, T. Nelson, Nisbet, O'Connell, O'Keefe, Owens, Patterson, Pavlovich, Peck, Peterson, Phillips, Quilici, Raney, Ream, Rehberg, Rice,

HOUSE BILL NO. 542

INTRODUCED BY GUTHRIE, AKLESTAD, HAYNE, WESTLAKE, CAMPBELL, COBB, ELLIOTT, WILLIAMS, DEMARS, KOEHNKE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED;~~ CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED; REQUIRING ~~THE~~ AN APPLICANT FOR A WATER USE PERMIT TO SUBMIT INDEPENDENT EVIDENCE TO MEET THE ~~CLEAR AND CONVINCING~~ SUBSTANTIAL CREDIBLE ~~CLEAR AND CONVINCING~~ SUBSTANTIAL CREDIBLE EVIDENCE STANDARD; AMENDING SECTION 85-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) Except as provided in subsections (2) ~~through (4)~~ and (3), the department shall issue a permit if the applicant proves by substantial credible evidence~~, or by clear and convincing evidence if a valid objection to the application is filed according to this part,~~ ~~OR BY CLEAR AND CONVINCING EVIDENCE IF A VALID OBJECTION TO THE APPLICATION IS FILED, ACCORDING TO THIS PART,~~ that the following criteria are met:

(a) there are unappropriated waters in the source of supply:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(2) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(3) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands

and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (3) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (2) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (3)(b)(ii) and (3)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water

shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(4) To meet the ~~clear--and--convincing~~ SUBSTANTIAL CREDIBLE ~~CLEAR-AND-CONVINCING~~ SUBSTANTIAL CREDIBLE evidence standard in this section, the applicant shall submit independent hydrologic or other evidence, INCLUDING WATER SUPPLY DATA, FIELD REPORTS, AND OTHER INFORMATION DEVELOPED BY THE DEPARTMENT, THE U.S. GEOLOGICAL SURVEY, OR THE U.S. SOIL CONSERVATION SERVICE AND OTHER SPECIFIC FIELD STUDIES, demonstrating that the criteria are met.

(5) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of

this section is invalid. ~~No~~ An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner ~~such~~ an unauthorized appropriation, diversion, impoundment, use, or other restraint. ~~No~~ A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

NEW SECTION. **Section 2.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 3.** Effective date. [This act] is effective on passage and approval.

-End-